

# **Exhibit 309**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

IN RE: BLUE CROSS BLUE SHIELD  
Master File No. 2:13-CV-20000-RDP  
ANTITRUST LITIGATION  
MDL NO. 2406

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H. E. FRECH, III, PH.D.

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Certified Realtime Reporter,  
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Reporter and Notary Public

1           Q.       Okay. So one -- to measure the ideal  
2     but-for world, one must evaluate what might have  
3     occurred absent this first agreement and all  
4     subsequent agreements, correct?

5                   MR. QUILLEN: Object to the form.

6           A.       Correct. Correct. And obviously  
7     that is challenging.

8           Q.       (BY MS. DONNELL:) And you state in  
9     your report that this but-for world is not directly  
10    observable because of defendants' consistent  
11    agreements which they enforced over a long period  
12    of time starting in the 1930s. Is that a correct  
13    statement of your view?

14                  MR. QUILLEN: Object to the form.

15          A.       Yes, that is correct.

16          Q.       (BY MS. DONNELL:) Okay. And you  
17    also state in your report that ESAs or exclusive  
18    service areas were anticompetitive from the very  
19    beginning. Is that a correct statement of your  
20    view?

21                  MR. QUILLEN: Object to the form.

22          A.       Yes.

23          Q.       (BY MS. DONNELL:) Okay. So --

24          A.       That is my opinion.

25          Q.       Is it your view that service areas

1 have been anticompetitive from the 1930s?

2 A. Yes, I believe so. That would be  
3 my --

4 Q. And is it your --

5 A. That would be my -- that would be my  
6 interpretation of the history.

7 Q. All right. And is it your view that  
8 service areas have been consistently enforced by  
9 the Blues since the 1930s?

10 A. They have certainly tried to enforce  
11 them since the 1930s. They have not always  
12 succeeded, which you can actually still see in the  
13 markets where there is some limited Blue-on-Blue  
14 competition.

15 Q. So at least as of the 1930s, Blues  
16 have tried to consistently enforce service areas,  
17 in your view?

18 A. I would say that is a fair statement.

19 Q. And is it your opinion that the Blues  
20 continue to enforce service areas from the 1930s  
21 through the following decades to the present?

22 A. You mean was it a continuous policy  
23 from the '30s right up until now? Yes, that is my  
24 interpretation, my understanding.

25 Q. Okay. And is there any period of

1 time that you would say the Blues did not enforce  
2 service areas?

3 A. Well, there's a period of time in one  
4 area, in one state.

5 Q. And what state was that?

6 A. That is Ohio. But that is only one  
7 state.

8 Q. And is that the only example that you  
9 can think of where service areas were not  
10 consistently enforced from the 1930s to the  
11 present?

12 A. Well, we would have to unpack that.  
13 They were consistently trying to enforce it, but  
14 there were lots of areas where competition would  
15 break out for a period of time and they couldn't  
16 successfully enforce it, they couldn't get the  
17 plans to stop competing, in that there were various  
18 lengths of time for that.

19 And that's -- in my first report,  
20 that history is brought -- is explained in great  
21 detail. The only place where they -- that I know  
22 of from the history where they didn't try to  
23 enforce it, didn't try to stop competition was Ohio  
24 for a period of years.

25 Q. All right. And you are referring to

1 subscribers would have been in the community  
2 regardless of whether they contracted with a Green  
3 or with another commercial insurer, for example, in  
4 Alabama, correct?

5 A. Yes. That is what I am saying.  
6 Probably -- probably I -- I probably should have  
7 said serve a broader variety of insurers. That is  
8 probably what I should have -- what it should say.  
9 I think that is very inartful. I am not surprised  
10 that you didn't understand it.

11 Q. Did you perform any quantitative  
12 analysis of Blue plans' ability under the National  
13 Best Efforts rule to expand the Green business in  
14 Alabama?

15 A. Quantitatively?

16 Q. Yes.

17 A. No, I did not.

18 Q. Okay. And your qualitative analysis  
19 is based -- your qualitative analysis that certain  
20 types of entry by Greens may run against the  
21 National Best Efforts rule is just based on your  
22 judgment and the rule itself?

23 A. The rule and my -- my kind of rough  
24 knowledge of the size of scale of Anthem and  
25 thinking about how the market would evolve.